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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Supplementary reports of States parties due in 1992

Addendum

EGYPT*

[13 April 1993]

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* The initial report submitted by the Government of Egypt is contained in document CAT/C/5/Add.5; for its consideration by the Committee, see documents CAT/C/SR.14 and 15 and Official Records of the General Assembly, Forty-fourth session, Supplement No. 46 (A/44/46, paras. 123-144). See also document CAT/C/5/Add.23, containing written replies of the Government of Egypt to questions raised by the Committee.

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## Introduction

1. Since time immemorial and by virtue of its exceptional geographical location in the lands of the Holy Scriptures, amidst major human civilizations, Egypt has played a special role at the international and regional levels (both Arab and African) in defending the rights of struggling peoples, over the ages, as evidenced by its interest in issues of decolonization, the freedom of peoples, self-determination, world peace, human rights and freedoms.

2. To play such a role effectively, Egypt had to draw heavily on its historic experience and wisdom as occupation, colonization, exploitation and wars were her lot of historic ills. Much of her energy and potential was depleted and the inevitable outcome was the classification of Egypt among the developing countries. Despite these constraints, Egypt has been part of the international efforts which led to the adoption of the Universal Declaration of Human Rights in 1948, and contributed to the drafting of the African Charter on Human and Peoples' Rights in 1981 and is currently involved in a serious attempt at establishing a human rights charter of the Arab and Islamic peoples.

3. Egypt was part of the international efforts aimed at codifying and safeguarding human rights and freedoms, as early as the beginning of the century. Egypt is an unreserved signatory of most international human rights conventions and treaties whilst many signatories expressed reservations thereon. Conscious of its leading role and its international obligations, Egypt has always promptly taken measures required by the provisions of international conventions it adhered to such as, introducing relevant legal and constitutional amendments submitting periodic progress reports and providing clarifications as to queries of competent international organizations or non-governmental organizations.

4. To facilitate the attainment of desired objectives, Egypt hosted field visits by representatives of international human rights organizations to visit penitentiary institutions and their personnel as well as hold meetings with the Public Prosecutor and government officials at the Ministry of Foreign Affairs, the Ministry of the Interior and the Ministry of Justice.

5. Aware of the role played by the Committee against Torture, whose mandate, as provided for in the Convention against Torture, is to uphold the noble values adopted by consensus by the international community so as to combat all forms of torture, laid down in the provisions of the said Convention, Egypt humbly submits its report to the Commission and stands ready to help the Committee complement any missing data or omissions and respond to all queries and requests for clarifications and information.

6. Annexed to the report is a table comparing articles of the Convention with articles of the Egyptian Constitution and legislation; reference is made, where appropriate, to selected important judiciary applications.

# I. THE CONSTITUTIONAL AND LEGAL STATUS OF TORTURE OFFENCES IN EGYPT

## A. Introduction

7. Ever since the last quarter of the nineteenth century, the Egyptian penal legislation has consistently designated as punishable offences unjustified or unlawful arrest accompanied with threats of murder and physical torture; all acts of torture of accused or convicted persons by public officials; and the use of force by officials acting in their official capacity in a manner detrimental to human dignity or conducive to physical pain.

8. Articles 117, 120, 258 of the Penal Code of 1883 and articles 110, 113, 244 of Act No. 3 of 1904 increasing penalties on such offences, as well as the current Penal Code (Act No. 58 of 1937, arts. 126, 129, 282) have designated the same offences with the same penalties. Article 126 stipulates that torture is an offence (aggravated penalty) punishable by hard labour or imprisonment for a term of 3 to 10 years; in cases of the victim's death, it is premeditated murder punishable by life hard labour. The legislator stipulates in article 282 that unjustified or unlawful arrest accompanied with threats of murder and physical torture is punishable (aggravation) by imprisonment for a term not exceeding one year or a fine.

9. Following the adoption of the International Covenant on Civil and Political Rights on 16 December 1966, Egypt felt it was her duty - on account of her ancient past and present ranking - to be in the forefront of signatory nations, on 4 August 1967.

## B. Legal and constitutional reforms

10. In the period preceding ratification, Egypt, conscious of its international obligations ensuing from its adhesion to this important instrument in the field of human rights, has undertaken substantive legal and constitutional reforms. The permanent Constitution was adopted in 1971; it contains most of the provisions of the aforementioned Covenant in its articles 40, 41, 57, 64, 68 and 71. The rights of any person whose freedom is restricted in any way and for whatever reason are therefore safeguarded by the following general principles:

(a) The rule of law is the basis of government in the State. The State is subject to the law. The independence and immunity of the judiciary are fundamental safeguards for the protection of rights and freedoms;

(b) The right of all persons to engage in litigation shall be guaranteed and safeguarded. No act or administrative decision can be legally declared immune to judicial control;

(c) Any person who is arrested or imprisoned or whose freedom is restricted must be treated in a manner conducive to the preservation of his human dignity. No physical or mental harm shall be inflicted on him;

(d) Any encroachment on the personal freedom or privacy of citizens or on the other public rights and freedoms guaranteed by the Constitution and the law shall constitute an offence;

(e) Criminal or civil proceedings in connection with encroachments on the public rights and freedoms guaranteed by the Constitution shall not be subject to any statute of limitations;

(f) Any statement of evidence extorted by torture shall be considered null and void;

(g) The State guarantees fair compensation for any person who is the victim;

(h) No person shall be detained or imprisoned in places other than those which are subject to the legal provisions governing prisons;

(i) Any person who is arrested or detained shall be informed immediately of the reasons of his arrest or detention. He shall have the right to communicate with any person whom he wishes to advise of what has happened or from whom he may wish to seek assistance in the manner prescribed by law. He must be promptly notified of the charges brought against him or her or any third party may appeal in court against such a measure;

(j) No person shall be arrested or imprisoned nor shall his freedom be restricted except by an order issued by the Department of Public Prosecutions or by the competent judge, and for reasons of investigation proceedings and maintaining public security;

(k) The establishment of the Supreme Constitutional Court to oversee the constitutionality of laws.

11. The promulgation of the current Egyptian Constitution in 1971 has committed the legislator to abide by its provisions and principles. Perhaps, one of the most important laws promulgated in this period was the Act on annulling litigation constraints contained in some acts, in the law on the Supreme Constitutional Court and in Act No. 37 of 1972; the latter amended by inserting a few articles in major laws with a view to including the above-mentioned constitutional principles in the different laws.

12. As to the Penal Code, additions were inserted in the Code so as to prescribe penalties for acts violating the privacy of citizens, as well as for crimes of torture, illegal arrest accompanied by a threat to kill or the inflicting of physical torture and use of force. All these acts are punishable in Egyptian law since the beginning of the twentieth century as it has been previously mentioned.

13. As for the Code of Criminal Procedure No. 150 of 1950, it has been amended in large parts by the Penal Code. It is worthwhile to refer to some of its principles as follows:

(a) A second paragraph has been added in article 15, stipulating that criminal actions in respect of an offence of torture referred to in articles 126 and 282 of the Penal Code and of other human rights and freedoms offences shall not be subject to any statute of limitations;

(b) A second paragraph has been added to article 40 stipulating that any person arrested or detained must be treated in a manner conducive to the preservation of his human dignity and must not be harmed physically or mentally;

(c) A first paragraph has been added to article 139 stipulating that any person arrested or detained must be informed immediately of the reasons for his arrest or detention. He also has the right to communicate with any person whom he wishes to notify of what has happened and is entitled to avail himself of the services of a lawyer who must be immediately notified of the accusation brought against him;

(d) A second paragraph has been added to article 259 stipulating that civil actions resulting from some specified offences are not subject to any statute of limitations and that if criminal actions have gone beyond the specified time, they shall not impinge on the process of civil actions;

(e) A second paragraph has been added to article 302, stipulating that any statement by the accused or witnesses which is proved to have been made under coercion or threat is considered null and void.

14. Some of the articles referred to in the Emergency Act No. 162 of 1958 have been amended to be consistent with the provisions of the Egyptian Constitution, the International Covenant on Civil and Political Rights - thus, as amended in Act No. 50 of 1982, article 3 bis stipulates that any person arrested or detained must be informed immediately and in writing of the reasons for his arrest or detention and that he has also the right to communicate with any person whom he wishes to notify of what has happened and is entitled to avail himself of the services of a lawyer. The article also defines that the detainee must be treated in the same way as a person held in precautionary detention, that he and any other persons concerned have the right to lodge complaint against any arrest and detention, with the competent court. The detainee has also the right to submit a new complaint 30 days after the rejection of his complaint.

15. Act No. 396 of 1956 on the regulation of prisons has been promulgated after Egypt has signed the International Covenant on Civil and Political Rights. As for Act No. 57 of 1968, it was issued to complement its provisions so as to be in conformity with what has been stipulated in the Convention in the following manner:

(a) Article 3 bis was added to the above-mentioned Act stipulating that any person, arrested, detained or deprived of his liberty in any way at one of the prisons specified in the Act or at a location chosen by a decision of the Minister of Interior shall be covered by the provisions of the Act. As to the right to enter these specified prisons and locations, it is reserved to the Public Prosecutor or to any officer representing him from the Department of Public Prosecutions;

(b) Article 20 bis was added, stipulating that a detainee held without a court order shall be treated in the same way as a person held in precautionary detention and any other provision contrary to this, is to be annulled;

(c) Acting 91 bis specifies the penalty of imprisonment for a public official, or one acting in an official capacity, who has confined or ordered to confine a person deprived of his liberty at a location other than one of the prisons or places specified in articles 1 and 1 bis of the Act.

16. These constitutional and legal amendments have paved the way for Egypt to accede to international human rights instruments, including the Convention against Torture. Presidential decree No. 154 of 1986, approving Egypt's accession to the latter has had legal effect in the country after the conclusion of the ratification procedure. It has been published in conformity with article 151 of the Constitution.

17. After this general review of the constitutional and legal situation of torture and use of force offences in Egypt, it is pertinent to refer in a second part to some main issues in detail in this report, such as the different stages of criminal investigation in Egyptian legislation in general and the characteristics of every stage and its legally prescribed guarantees. The report shall also deal with the provisions of the Emergency Act, and with those regulating prisons as well as those on the judicial authority with a view to highlighting rights and safeguards specified in these laws on detainees. Part three will be devoted to the supremacy of law and the independence of the judiciary.

## II. MAIN LEGAL PROVISIONS CONCERNING CRIMINAL INVESTIGATION, STATE OF EMERGENCY AND THE PRISON SYSTEM

### A. The stages of criminal investigation

18. In Egypt, criminal investigation includes three phases, each one with its specific traits and basic guarantees.

#### 1. Collecting evidence

19. The first phase is the phase where evidence is assembled. This is the investigation register which is filled in by officers of justice belonging to the police. This phase aims at collecting necessary elements of proof to facilitate the task of preliminary investigation and judicial proceedings. It is a phase in the proceedings of criminal actions even in cases of flagrante delicto because it requires the following.

(a) Officers of justice have an obligation to receive all communications and complaints transmitted to them concerning offences and must send them immediately to the Department of Public Prosecutions;

(b) In cases of flagrante delicto or cases involving offences punishable by more than three months' imprisonment, the suspect must be brought before the office of public prosecutions within 24 hours;

(c) Civil actions can be brought against the complaint when the victim as a result of the crime is known;

(d) Anyone who is arrested must be informed immediately of the reasons for his arrest or detention;

(e) Any arrested person has the right to communicate with any person whom he wishes to notify of what has happened and is entitled to avail himself of the services of a lawyer.

2. The preliminary investigation phase

20. This phase is undertaken by the Department of Public Prosecutions. This investigation is mandatory as to criminal offences. It is also characterized by its in camera sessions. The requirements are as follows:

(a) The lawyer of the accused must be invited to be present during his interrogation and confrontation;

(b) The lawyer must be permitted to acquaint himself with the facts of the case, before interrogation of and confrontation with the accused;

(c) The accused must not be separated from his lawyer during the examination;

(d) The Department of Public Prosecutions may order to arrest the accused for four days. If the Department of Public Prosecutions is of the view that the arrest is to be extended, the case is to be put before the summary judge who has the authority to extend the imprisonment for a maximum period of 45 days. Then the case is submitted to the misdemeanour appeal court which is authorized to extend the term of imprisonment so as not to exceed 6 months; otherwise, the accused is released and it is up to the judge or the court to release the accused at any time.

3. The final examination phase

21. This is the phase in which evidence is re-examined by the court. Witnesses and experts are also heard, questioned and the accused is requestioned about the charges brought against him. This phase is public except in cases in which the court rules that for the sake of public order and morality, the hearing should be in camera. The requirements are as follows:

(a) A lawyer must be designated to defend the accused if the latter does not have a lawyer specialized in criminal charges;

(b) The accused must be present at all proceedings of the court;

(c) The accused as well as the opposing parties must be informed of the case as soon as they are notified of the trial;

(d) The accused has the right to challenge judgements in absentia and against those handed down in his presence. The fact of challenging a judgement must not be held against the accused;

(e) Judgements in absentia in cases involving felonies are declared null and void if the accused appears or is arrested; such cases must be reheard by the court.

22. Thus, it can be seen from the various legally specified stages of investigation in Egypt, that they provide for immediate notification of the reasons for the arrest of a person in addition to his right to avail himself of the services of a lawyer. Furthermore, safeguarding the termination of all procedures is also ensured including investigation, bringing the suspect to trial as well as confront him and in his presence in addition to submitting the case within 24 hours before the Department of Public Prosecutions. All this constitutes, as it has been previously mentioned, a division of the judicial authority whose members enjoy the immunity of judges and are not subject to dismissal. The judiciary must also decide upon the extension of the imprisonment.

23. All the above points indicate that the legislator is intent on providing the right atmosphere so as to deal with torture or use of force crimes inflicted upon the accused before authorities in charge of investigation or during trial.

24. Worthy to note at this juncture is the rule made by the Egyptian Court of Cassation on 5 November 1986 stipulating that Egyptian law does not set a condition of the presence of physical evidence on the victim to decide upon whether a crime of torture has been committed for the extortion of a confession from the accused (as stipulated in article 126 of the Penal Code).

B. Provisions and specified safeguards of the Emergency Act

25. States of emergency which are proclaimed in the country are regulated by article 148 of the Egyptian Constitution, which stipulates that a state of emergency can be proclaimed by the President of the Republic but must be submitted to the People's Assembly for ratification within 15 days from the day of its proclamation. The same article further stipulates that a state of emergency can be proclaimed only for a specified period of time which can be extended solely with the approval of the People's Assembly.

26. In this connection, article 4.1 of the International Covenant on Civil and Political Rights stipulates that, in time of public emergency which threatens the life of the nation and the existence of which has been officially proclaimed, it is permissible to take measures derogating from the obligations arising from the Covenant. However, such measures must not derogate from the principles set forth in articles 6, 7, 8, 11, 15, 16 and 18 concerning the right to life, safeguards pertaining to the death penalty, the prohibition of torture and of slavery, servitude or imprisonment for civil debt, the legal basis of crime and punishment and recognition of legal personality and of freedom of thought and religious belief.

27. The Egyptian Legislature adopted the system of pre-emergency legislation by promulgating Act No. 162 of 1958 as amended by Acts No. 37 of 1972, No. 164 of 1981 and No. 50 of 1982 which contains the provisions and regulations to be applied when a state of emergency has been proclaimed in the country. These legislative instruments define the circumstances in which a state of emergency can be proclaimed, the authority competent to proclaim it, the procedure for its extension, the measures that can be taken while it is in force, the circumstances in which complaints can be lodged against it, the procedures to

be followed by the emergency courts and the effects of the termination of the state of emergency. These provisions are explained in greater detail below.

1. Justification of the proclamation of a state of emergency

28. The Act permits the proclamation of a state of emergency in conditions in which public order and security are endangered due to the outbreak of war, the existence of a situation that threatens to lead to such an outbreak, the occurrence of disturbances within the country, general disasters or the spread of an epidemic (art. 1).

2. The authority competent to proclaim a state of emergency

29. A state of emergency must be proclaimed and terminated by a presidential decree stating the reason for its proclamation and specifying the area in which it will apply, as well as the date of its entry into force and its duration. The decree must be submitted to the People's Assembly for ratification within 15 days. If it is not submitted to, or not approved by, the People's Assembly, the state of emergency is deemed to be terminated (art 2. of the Act, as amended by Act No. 37 of 1972).

3. Extension of the state of emergency

30. A state of emergency cannot be extended beyond the period specified in the decree by which it was proclaimed without the approval of the People's Assembly. It is deemed to be terminated unless such approval is granted before the expiration of the said period (art. 2 of the Act, as amended by Act No. 37 of 1972).

4. Measures that can be taken during a state of emergency

31. When a state of emergency has been legally proclaimed, the President of the Republic is empowered to take appropriate measures to avert the danger threatening the country and maintain security and order. He may impose restrictions on freedom of assembly, movement and residence, order the arrest and search of suspicious persons who pose a threat to security, censor correspondence and the press, determine the working hours at public institutions, issue any work assignments, seize movable and immovable property (without prejudice to the provisions of the Mobilization Act concerning complaints and compensation), withdraw licences for firearms and explosives and evacuate or isolate any areas. The scope of these measures can be expanded only with the approval of the People's Assembly, in accordance with the procedures that must be followed for the proclamation of the state of emergency itself (art. 3 of the Act).

5. Complaints lodged against measures taken during a state of emergency

32. (a) Anyone who is arrested or detained must be informed immediately of the reasons for his arrest or detention and has the right to contact any person who he may wish to notify of what has happened. He is also entitled to avail himself of the services of a lawyer;

(b) The detainee must be treated in the same way as a person held in precautionary detention;

(c) The detainee, and any other persons concerned, have the right to lodge a complaint with the Higher State Security Court if he is not released within 30 days from the date of issue of the arrest warrant;

(d) The court must hand down a substantiated decision on the complaint within 15 days from the date of its submission, failing which the detainee must be released immediately;

(e) Any person whose complaint has been rejected has the right to submit a new complaint 30 days after the rejection of his previous complaint;

(f) The Minister of the Interior has the right to appeal against a release order issued by the court. Such appeal must be heard, within 15 days of its submission, by another division whose decision is final (art. 3 bis added to Act No. 60 of 1968, as amended by Act No. 37 of 1972, (Act No. 165 of 1981 and Act No. 50 of 1982).

6. Court competent to hear complaints against detention orders

33. The Egyptian Emergency Act makes provision for the formation of State security (emergency) courts which are competent to hear cases involving offences in violation of the provisions of decrees promulgated in connection with a state of emergency, as well as offences under the ordinary law which the President of the Republic decides to place under their jurisdiction. These courts are constituted as follows:

(a) Lower State security courts, established within the area of jurisdiction of each court of first instance and presided over by one of the latter's judges, are competent to hear cases involving offences punishable by imprisonment and/or a fine. The President of the Republic is empowered to appoint two officers as additional members of such courts;

(b) Higher State security courts, established in the area of jurisdiction of each court of appeal and presided over by three of its justices, are competent to hear offences punishable by a criminal penalty, as well as other offences specified by the President of the Republic. Two officers may be appointed as additional members of such courts by order of the President of the Republic;

(c) Actions brought before these courts are instituted by members of the Department of Public Prosecutions, who are vested with the powers of examining magistrates. It is to be noted that members of the Department of Public Prosecutions have the immunities of judges and are not subject to dismissal according to the provisions of Egyptian law;

(d) These courts follow the procedures laid down in the legislation in force in regard to the hearing and judgement of cases and enforcement of the sentences handed down;

(e) Judgements handed down by State security (emergency) courts are subject to ratification by the President of the Republic and do not become final before such ratification. If the accused is acquitted during a retrial ordered by the President of the Republic, ratification of the verdict is mandatory;

(f) Before judgements are ratified by the President of the Republic, both they and any appeals lodged against them must be examined either by a justice presiding over a court of appeal, or by a solicitor general designated to that end. They must ascertain the correctness of the procedures, examine the appeals and express their opinion, by means of a substantiated memorandum, in each criminal case;

(g) The President of the Republic is empowered to order a stay of court proceedings, to commute a sentence and to cancel or suspend the enforcement of any principal, supplementary or incidental penalty either before or after ratification (arts. 7, 9, 10, 12, 14 and 16 of the Act).

### 7. Effects of the termination of a state of emergency

34. Articles 19 and 20 of the Act specify the effects of the termination of a state of emergency on cases that are being heard by State security (emergency) courts. They stipulate that the courts must continue to hear those cases, whereas cases that have not been referred to them are heard by the ordinary courts competent to do so. Regulations concerning ratification of judgements continue to apply to judgements handed down before the termination of the state of emergency and also to judgements handed down in cases which continue to be heard by the State security (emergency) courts in accordance with the above-mentioned provision.

35. The Supreme Constitutional Court has received a few appeals against the law of emergency. It has ruled the following constitutional principles:

(a) The State security (emergency) court is the natural judge in accordance with the provisions of the Constitution when it examines appeals against detention (Constitutional judgement No. 55, judicial year 5, hearing of 16 June 1984).

(b) The ratification of judgements by the State security (emergency) courts in accordance with article 12 of the law referred to by a military ruler or by whoever represents him legally is considered an important and essential factor for the completion of the legal basis of the judgement and for its acquiring legal force (Appeal No. 5, judicial year 11, hearing of 6 April 1991).

### 8. Legal immunities provided by the Emergency Act

36. It can be concluded that the aforementioned Egyptian Emergency Act provides for the following legal immunities:

(a) Provisions of this law do not stipulate the obstruction of constitutional or legal provisions or the proceedings of public prosecutions

in the country. It has set as an obligation the referral of the proclamation of a state of emergency to the People's Assembly which should approve and extend it;

(b) Measures which may be taken legally by the President of the Republic so as to impose restrictions on freedoms are referred to in law due to circumstances which require the proclamation of a state of emergency. These measures can only be expanded with the approval of the People's Assembly;

(c) Granting members of the Department of Public Prosecutions the powers of examining magistrates is based on the fact that they enjoy the immunity of judges and are not subject to dismissal. These vested powers result from the nature of circumstances which must be faced so as to achieve security, public order and safety in the society at large;

(d) The Emergency Act as amended in Act No. 50 of 1982, has specified the immediate notification of the reasons for the arrest or detention of a person provided that it is in writing to ensure to a large measure the freedom of the detainee or the person arrested as well as enable the lawyer in charge to defend him;

(e) The right to periodic appeal, (i.e. every 30 days) against arrest or detention has been allowed in the light of the amendment referred to in the previous provision related to the detainee and to any other concerned party; this is consistent with article 71 of the Constitution;

(f) The court which has the competence to examine appeals against detention is considered the natural judge in conformity with the judgement made by the Constitutional Court. Specified procedures in general law are also applied before such a court.

(g) Ratifying judgements consistent with the legal procedures can be considered an important phase of litigation in which the judgement completes its legal form as ruled by the Supreme Constitutional Court;

(h) The law does not violate the provisions contemplated in article 4 of the International Covenant on Civil and Political Rights which should not be violated even under the proclamation of a state of emergency. One of these provisions does not allow the perpetration of an act of torture; the law does not stipulate either the right to permit acts punishable by the current Penal Code but specifies that those detained by its provisions must be treated in the same manner as those held in precautionary detention;

(i) The continuity of the Emergency Act depends on the continuity of the circumstances that led to its proclamation - this requires the approval of the legislative body. In addition, any measures taken, under this Act are subject to the control of the judiciary whose members enjoy immunity and independence. These are all fundamental safeguards needed to ensure that measures will be taken to avert danger and provide security, peace and stability for all;

(j) The right to detain, under the Emergency Act is legally prescribed and it cannot be exercised in an unserious or haphazard fashion. In reality, it is a measure that aims at isolating persons who pose a threat to security during the proclamation of an emergency, subject to periodic judicial control. As to the legally specified right of the Ministry of Interior to resume detention orders and regarding the occasional obligation of security authorities to resume detention after release of the detainee, these are required by force of circumstances so as to grapple with new information, evidence and activities of both individuals and groups - which cannot otherwise be known at an appropriate time and be subject to judicial control. In the light of all these truths, one cannot accept the claim that law creates an appropriate setting for committing acts of torture. Persons detained according to provisions of the law, as it has been previously mentioned, enjoy safeguards that impede the perpetration of an act of torture, considered to be an offence, punishable by law even under the provisions of the Emergency Act. This is in conformity with article 2, paragraph 2 of the Convention against Torture and with articles 4 and 7 of the Covenant on Civil and Political Rights.

C. Provisions of the Regulation of Prisons Act No. 396 of 1956

37. The Prisons Regulatory Act No. 396 of 1956 has dealt with prisons, rights and legally specified safeguards given to persons whether detainees or prison employees subject to its provisions. It is thus appropriate to give a summary of its most important provisions:

(a) Detaining, arresting or holding any person in one of the specified prisons mentioned in the previous article or at any location determined by a decision of the Minister of the Interior has been legally specified. All provisions contained in this Act shall apply to it (arts. 1 and 1 bis and the last article added to Act No. 57 of 1968);

(b) No person is allowed to be detained without a legally written order from the competent authorities. The detainee is not to be held beyond the specified period (art. 5);

(c) Persons held in precautionary detention must be confined in premises separate from those in which other prisoners are held. They have the right to wear their own clothes and have their own food brought to them (arts. 14, 15, and 16);

(d) Any person detained without a judicial judgement must be treated in the same manner as a person held in precautionary detention (art. 20 bis as added to Act. No. 57 of 1968);

(e) Prisoners are given periodic medical check-ups and every prison has a resident doctor (art. 33);

(f) Solitary confinement is a penalty that may be inflicted on prisoners for a maximum period of 15 days (art. 43, para. 5).

(g) The prison warden must accept any written or oral complaint submitted by a prisoner. He should inform the Department of Public Prosecutions or the competent authority after recording it in the complaints register (art. 80).

(h) No government officer is allowed to contact any person held in precautionary detention, inside the prison, without a written order by the Department of Public Prosecutions. In the case of the issue of such an authorization, the person's name, the date of the meeting as well as the date and object of the permit should be entered in the daily prison register.

(i) Prisons are subject to judicial inspection. The Public Prosecutor together with his agents, acting within their jurisdiction, are entitled to enter at any time all places in prisons to ensure the application of laws and regulations as well as take the necessary measures as to violations. They must accept prisoners' complaints, examine records and legal papers to verify their compliance with specified rules (art. 85);

(j) Investigation judges, presidents and agents of appeal courts and of courts of first instance are entitled to enter prisons at any time. In such a case, the prison administration is to transmit their comments to the prison director (art. 86);

(k) Any public official is punishable if he detains or orders to detain a person in places other than those places and prisons specified in article 1 and 1 bis (art. 91 bis para. 2 added to Act No. 57 of 1968).

38. It can be said, based on the above comments, that the provisions and rules stipulated in the Prisons Act constitute important guarantees for judicial control and supervision for persons detained, allowing them legally specified rights in addition to providing them with sufficient care needed due to their stay in prisons. Several points of importance can be raised at this juncture:

(a) Prisons and places of detention have been specified according to law and to a decision taken by the Minister of Interior. No person can be detained or arrested in any other place than the one specified;

(b) All these places are in general subject to judicial inspection at all times to ensure compliance with laws and regulations;

(c) Imprisonment prevents any contact made by officials unless authorized by the Department of Public Prosecutions.

39. It is worthy to recall article 43 of the Code of Criminal Procedure which stipulates that everyone is responsible to notify the Department of Public Prosecutions as soon as he is cognizant of a detainee being held on illegal grounds or detained in a place other than the one designated for imprisonment. This article delineates the procedures that must be taken by the Department of Public Prosecutions such as immediate arrival at the premises where the detainee is being held so as to carry out the necessary investigation in addition to giving an order for an immediate release of the person, if detained on illegal grounds.

## III. THE SUPREMACY OF LAW AND THE INDEPENDENCE OF THE JUDICIARY IN THE EGYPTIAN CONSTITUTION AND IN THE JUDICIAL AUTHORITY ACT

40. The Egyptian Constitution, promulgated in 1971, stipulates in its preamble that the rule of law is not a guarantee solely needed for the individual's freedom, but it is at the same time the only basis for the legitimacy of authority. The drafters of the Egyptian Constitution ensured that its provisions dealt with this principle in the text of the Constitution. Thus, an entire chapter has been specified in article 64 which reads "the rule of law is the basis of government in the State". Article 65 stipulates that the State is subject to the law. The independence and immunity of the judiciary are fundamental safeguards for the protection of rights and freedoms. As for article 66, it deals with the principle that penalties are personal and that there is no crime or punishment except as defined by law and penalties can be inflicted only on the basis of a court judgement and solely for acts committed subsequent to the entry into force of the legislation under the terms of which they are prohibited. Article 67 comes next stipulating that the accused is presumed innocent until proved guilty at a judicial hearing in which his right to defend himself is guaranteed. Every person accused of a felony must have a lawyer to defend him. Whilst article 68 specifies that all persons have the right to engage in litigation, which shall be guaranteed and safeguarded and every citizen shall be entitled to resort to his natural judge. The State also undertakes to ensure that litigants have access to judicial bodies and that cases are adjudicated rapidly and that no act or administrative decision can be legally declared immune to judicial control.

41. As to the right of defence, it is guaranteed in article 69 and legal provision is said to be made to ensure that persons lacking financial means are able to resort to the courts in defence of their rights whilst article 70 stipulates that criminal proceedings can be instituted only by order of a judicial authority. Next follows article 71 which reads as follows: "Any person who is arrested or detained shall be informed immediately of the reasons for his arrest or detention. He shall have the right to communicate with any person whom he wishes to advise of what has happened and he or any third party may appeal in court against the measure taken to restrict his personal freedom". This chapter ends with the stipulation that judgements are handed down in the name of the people. Any refusal to execute, or any obstruction of the execution of, such judgements on the part of competent public officials constitutes an offence punishable by law. In such a case, the successful plaintiff in the case concerned has the right to institute criminal proceedings directly before the competent court. All these provisions are all consistent with the provisions contained in the International Covenant on Civil and Political Rights to which Egypt was already a signatory.

42. Thus, based on these texts, it can be said that the Egyptian Constitution has enshrined the principle of the rule of law with its dual purpose, i.e. the State being subject to law and the independence and immunity of the judiciary. It follows that judgements made by courts are those that highlight this principle. Accordingly, the Constitution stipulates that any refusal to execute, or any obstruction of the execution of, such judgements on the part of competent public officials constitutes an offence punishable by law.

43. As to the independence of the judiciary, successive constitutions in Egypt have underlined the independence of the judicial authority. This principle is dealt with in article 165 which stipulates that the judicial authority shall be independent. It shall be exercised by courts of various kinds and levels which shall pass judgement in accordance with the law. Whilst article 166 underlines the independence of judges and in their administration of justice, they shall be subject to no power other than that of the law and that no authority shall have the right to interfere in legal proceedings or judicial affairs. Article 168 added that judges cannot be dismissed and that their disciplinary accountability is regulated by law. These texts include principles contained in the Special Declaration on the Independence of the Judiciary issued by the United Nations in 1965.

44. Based on the above-mentioned points, successive penal codes have been formulated since 1883 punishing by imprisonment and/or a fine any form of intercession with the judiciary, whether a judge or a court, on behalf of an official in favour of one of the opposing parties or against it through an order, application, request, or recommendation (art. 120 of the current Penal Code). These laws punish too any judge who, as a result of such intercession, refrains from adjudicating or hands down a judgement which is found to be unjust. He is then liable to a penalty of imprisonment, a fine and removal from office. If the judge refrains from adjudicating in other cases he has committed an offence punishable by a fine and removal from office (arts. 121 and 122 of the current Code).

45. In the light of these principles and provisions, the Judicial Authority Act No. 46 of 1972 was promulgated as amended by Act No. 17 of 1976, and No. 25 of 1984. It embodies fundamental principles recognized in the Egyptian Constitution and in the United Nations Basic Principles on the Independence of the Judiciary adopted at the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 26 August - 6 September 1985) as illustrated by the following:

(a) The competence of the courts to adjudicate in all disputes and offences, unless otherwise stipulated by special enactment, is defined by law (arts. 1 and 15 of the Act);

(b) Judges cannot be transferred, reassigned or seconded except in the circumstances and the manner prescribed by law (art. 52 of the Act);

(c) Members of the judiciary and the Department of Public Prosecutions, with the exception of assistant prosecutors, are not subject to dismissal (art. 67 of the Act);

(d) The general assemblies formed at each court and consisting of all its members are responsible for allocating and scheduling work, determining the number of divisions and sessions of the court and delegating its members to work in the criminal courts (art. 30 of the Act);

(e) The Higher Council of the Judiciary is legally competent to hear all matters relating to the appointment, promotion, transfer, assignment and secondment of members of the judiciary and the Department of Public Prosecutions, as well as other matters concerning them, in the manner

prescribed by law. The Council is presided over by the president of the Court of Cassation and includes among its members the President of the Cairo Court of Appeal, the Attorney General, the two most senior presidents of the other courts of appeal (arts. 77 bis (1) and 77 bis (2) of the Act);

(f) Only the civil divisions of the Court of Cassation are competent to hear application submitted by members of the judiciary and the Department of Public Prosecutions for the annulment of final administrative decisions concerning their affairs. Those divisions are also vested with sole competence to hear application for compensation and disputes concerning salaries, pensions and allowances (art. 83 of the Act);

(g) The disciplinary control of judges is exercised by a special board consisting of the resident of the Court of Cassation, the three most senior presidents of the courts of appeal and the three most senior chief justices of the Court of Cassation. The meetings of the board are held in camera and its decisions concerning removal from office require ratification by the President of the Republic, which is published in the Official Gazette (arts. 98, 106, 108 and 110 of the Act);

(h) Except in cases of flagrante delicto, a judge cannot be arrested or held in precautionary detention unless permission has been obtained from a special committee. In cases of flagrante delicto, the matter must be referred within 24 hours to the said committee, which is vested with sole competence to order the continued detention or release of the judge. No investigative action may be taken in criminal matters without the approval of the said committee. Custodial sentences imposed on judges must be served in special institutions (art. 96 of the Act).

Mandatory comments

46. Egypt is unique in recognizing that members of the Department of Public Prosecutions headed by the Attorney General are not subject to dismissal as the Department is a basic division of the judiciary. Under the Egyptian system, it has the competence to investigate and accuse in public actions which led to the provision of such an immunity as specified for the judiciary. In addition, members of the Department of Public Prosecutions have the same immunities as those awarded to judges concerning their appointment, transfer and retirement which must be accepted by the Higher Council of the Judiciary. Egyptian legislation is also consistent with the provisions contained in the Basic Principles on the Independence of the Judiciary adopted at the seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Milan, 26 August - 6 September 1985). This declaration stipulates that the independence of the representatives of the accusation is an essential condition, like the independence of the judiciary and a safeguard needed to attain justice. This explains why members of the Department of Public Prosecutions have to enjoy the same immunities as their counterparts in the judiciary.

47. It is worthy to note here the ruling made by the Higher Constitutional Court in Appeal No. 8, judicial year 8 in the hearing of 7 March 1992, concerning its interpretation of article 68 of the Constitution which stipulates that the State is responsible for citizens nationals and foreigners

alike, to be brought before its courts without any difficulty. Furthermore, the legally specified rights must be protected taking into account the guarantees needed for an effective administration of justice i.e. according to the norms of justice applied in a civilized state.

## IV. CONCLUSION

48. Through this brief review of the constitutional and legal position in Egypt in regard to crime offences and to violations of human rights and freedoms, we can draw the following conclusions:

(a) All principles of human rights and freedoms in regard to offences examined by this august committee are accorded high status in Egypt's Constitution and legislation. This is ensured by the judicial control of the constitutionality of legislation through the Supreme Constitutional Court and the independence of the judiciary whose members are competent to hear complaints concerning offences and any compensation that may ensue out of such violations.

(b) Respect for these principles and rights is ensured by the legal protection that they enjoy as illustrated by the guarantees attached to them by the legislator concerning accountability for civil or criminal offences; this is through the recognition of their not being subject to any limitation and giving penalties for any such violation. Needless to say, at this juncture - this is only too well understood by members of this august committee - that the principle of offences not being subjected to any statute of limitations is primarily aimed at ensuring the punishment of offenders regardless of the passage of time. It is aimed too at safeguarding victims' rights whilst taking into account their psychological traumas in the wake of violations which can delay them in notifying authorities at the appropriate time i.e. at the time when offenders were still in office.

(c) The aim of the various constitutional and legal reforms witnessed in Egypt during the last 20 years was to join the international awakening movement regarding human rights and its international instruments of which Egypt is a member, reflect the deep concern that Egypt is showing for mankind's status, for its rights and freedoms and confirm clearly Egypt's desire to lay the foundations for the future in such a way as to safeguard and protect these rights.

Annex

TABLE COMPARING THE ARTICLES OF THE CONVENTION AGAINST TORTURE WITH THE EGYPTIAN CONSTITUTION AND LEGISLATION

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
|---|---|---|
| Article 2<br><br>1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.<br><br>2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.<br><br>3. An order from a superior officer or a public authority may not be invoked as a justification of torture. | Article 64<br><br>The rule of law is the basis of government in the State.<br><br>Article 65<br><br>The State is subject to the law. The independence and immunity of the judiciary are fundamental safeguards for the protection of rights and freedoms.<br><br>Article 71<br><br>Any person who is arrested or detained shall be informed immediately of the reasons for his arrest or detention. He shall have the right to communicate with any person whom he wishes to advise of what has happened or from whom he may wish to seek assistance in the manner prescribed by law. He must be promptly notified of the charges brought against him and he or any third party may appeal in court against this measure taken to restrict his personal liberty. Legal provision shall be made for this right of appeal in such a way as to ensure that a judicial decision is taken thereon within a specified period, failing which the person arrested or detained must be released. | A. The Emergency Act No. 162 of 1958<br><br>The provisions of the law do not allow for the perpetration of criminal acts prohibited by the Penal Code including torture offences. The Act, however, defines the rights of persons who suffer detriment from its provisions; they are as follows:<br><br>1. Any person who is arrested or detained must be informed immediately and in writing of the reasons for this measure and has the right to contact any person whom he may wish to notify of what has happened. He is also entitled to avail himself of the services of a lawyer.<br><br>2. The detainee must be treated in the same way as a person held in precautionary detention.<br><br>3. The detainee, and any other persons concerned, have the right to lodge a complaint with the Higher State Security Court.<br><br>4. The court must hand down a substantiated decision on the complaint within 15 days from the date of its submission.<br><br>5. Any person has the right to submit a new complaint 30 days after the rejection of his previous complaint.<br><br>6. State Security Emergency Courts are constituted of high ranking judges (three justices) in addition to possibly two officers. |

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
|---|---|---|
| Article 2 (continued) | Article 148<br><br>States of emergency are proclaimed by the President of the Republic in the manner prescribed by law. Such proclamations must be submitted to the People's Assembly, for ratification, within 15 days. If the People's Assembly has been dissolved, the matter must be referred to the new Assembly at its first meeting. In all cases, a state of emergency can be proclaimed only for a specified period of time, beyond which it can be extended only with the approval of the People's Assembly. | B. The Code of Criminal Procedure No. 150 of 1950<br><br>Article 63 stipulates that there is no crime if the act has been committed by a public official who is executing an order according to instructions received from his superior or in the case of his good intentions as he acted in conformity with the laws or according to his competence. The article stipulates that the official has to prove in all cases that he committed the act only after thorough investigation and inspection, believing in its legitimacy and that he has reasonable grounds for his act.<br><br>C. The Prisons Act No. 396 of 1956<br><br>Article 20 bis stipulates that any person detained without a judicial order must be treated as a person held in precautionary detention.<br><br>Article 91 bis stipulates the punishment by imprisonment of any public official who has detained persons in any manner, in places other than those legally designated (i e. those places which are under judicial inspection).<br><br>D. Judicial applications<br><br>The Supreme Constitutional Court has ruled that the Higher State Security (Emergency) Court, which is vested with sole competence to hear complaints against arrest and detention orders, has become the natural judge in such disputes and that the court's competence to hear such complaints does not render arrest and detention warrants immune to judicial control and, therefore, does not entail any violation of the provisions of article 68 of the Constitution. (Appeal No. 55, judicial year 5, hearing of 16 June 1984.) |

Annex (continued)

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
|---|---|---|
| Article 3<br><br>1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.<br><br>2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant of mass violations of human rights. | Article 51<br><br>No citizen shall be deported from the country or prevented from returning thereto.<br><br>Article 53<br><br>The State shall grant the right of political asylum to any foreigner who has been persecuted for his defence of the interests of peoples, human rights, peace or justice. The extradition of political refugees is prohibited.<br><br>Article 68<br><br>The right of all persons to engage in litigation shall be guaranteed and safeguarded and every citizen shall be entitled to resort to his natural judge. The State undertakes to ensure that litigants have access to judicial bodies and that cases are adjudicated rapidly. No act or administrative decision can be legally declared immune to judicial control.<br><br>Article 172<br><br>The Council of State shall be an independent judicial body with the task of adjudicating in administrative disputes and disciplinary proceedings. Its other functions shall be prescribed by law.<br><br>Article 175<br><br>The Supreme Constitutional Court is vested with sole competence to rule on the constitutionality of legislation and regulations, and to interpret legislative texts, in the legally specified manner. The law shall also define the Court's other functions and regulate the procedures that it must observe. | A. The Council of State Act No. 47 of 1972<br><br>(a) Article 1 stipulates that the Council of State is an independent judicial body.<br><br>(b) Article 91 stipulates that members of the Council of the State holding the rank of a judge or above are not subject to dismissal and enjoy the same safeguards as those accorded to judges.<br><br>(c) Article 10 stipulates that the Council of State is competent to hear appeals from individuals or bodies against final decisions taken by administrative authorities and is authorized to give compensation. Any refusal or failure by the administrative authorities to take action required of them, in accordance with the laws and regulations constitutes an administrative decision.<br><br>B. Judicial applications<br><br>The Supreme Constitutional Court has ruled that the State is responsible according to article 68 of the Constitution to hear both nationals and foreigners in its courts. In addition, it is to give due protection to the rights specified in its legislation by respecting fundamental safeguards needed to ensure an efficient administration of justice (Appeal No. 8, judicial year 8, hearing 7 March 1992). |

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
|---|---|---|
| Article 4<br><br>1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.<br><br>2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature. | Article 57<br><br>Any encroachment on the personal freedom of privacy of citizens or on the other rights and public freedoms guaranteed by the Constitution and the law shall constitute an offence and criminal or civil proceedings in connection therewith shall not be subject to any statute of limitations. The State guarantees fair compensation to any person who is a victim of such an offence. | A. The Penal Code (Act No. 58 of 1937)<br><br>The following acts are designated as criminal offences in the Penal Code:<br><br>(a) Extortion of a confession from an accused person through torture ordered or inflicted by a public official is punishable by hard labour or by imprisonment for a 3 to a 10 year term. If the victim dies, the offender is liable to a penalty prescribed for murder (art. 126).<br><br>(b) Imposition on a convicted person, by a public official, of a punishment more severe than that to which the said person has been legally sentenced, or a punishment to which he has not been sentenced, is punishable by imprisonment (art. 127).<br><br>(c) The use, by a public official acting in his capacity as such, of violence incompatible with human dignity or likely to cause physical pain is punishable by imprisonment or a fine (art. 129).<br><br>(d) If the arrest or detention is made without an order from the competent authorities, or in circumstances other than those in which such is permitted by law and accompanied by physical torture or a threat to kill the arrested person; punishment is hard labour (art. 282). General rules on criminal implication shall apply to these crimes as stipulated in articles 39 to 44 of the Penal Code.<br><br>B. Code of Criminal Procedure No. 150 of 1950<br><br>(a) Article 15, paragraph 2, of the Code stipulates that criminal actions in respect of the crime of torture mentioned in articles 126 and 282 of the Penal Code are statute-barred. |

Annex (continued)

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
|---|---|---|
| Article 4 (continued) | | (b) Article 40, paragraph 2, stipulates that any person arrested or detained must be treated in a manner conducive to the preservation of his human dignity and must not be harmed physically or mentally.<br><br>(c) Article 252 stipulates that civil actions resulting from some specified offences are statute-barred. Even if criminal actions are not statute-barred, this shall not impinge on civil actions.<br><br>C. The Prisons Regulatory Act No. 396 of 1956<br><br>Article 91 bis stipulates that it is a criminal offence, punishable by imprisonment, for a public official to confine a person in any way deprived of his liberty at a location other than one of the prisons or places specified in articles 1 and 1 bis as they are the places subject to judicial control.<br><br>D. Judicial applications<br><br>The Egyptian Court of Cassation has ruled in the hearing of 5 November 1986 that Egyptian law does not require physical evidence of torture on the victim to conclude that a torture offence has been committed with the aim of extorting a confession (art. 126 of the Penal Code). |

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
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| Article 5<br><br>1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:<br><br>(a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;<br><br>(b) When the alleged offender is a national of that State;<br><br>(c) When the victim is a national of that State if that State considers it appropriate.<br><br>2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article.<br><br>3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law. | Article 66<br><br>Penalties are personal. There is no crime or punishment except as defined by law and penalties can be inflicted only on the basis of a court judgement and solely for acts committed subsequent to the entry into force of the legislation under the terms of which they are prohibited.<br><br>Article 70<br><br>Criminal proceedings can be instituted only by order of a judicial authority, except where otherwise provided by law. | The Penal Code No. 58 of 1937<br><br>Article 1 of the Code stipulates that its provisions apply to whoever, Egyptians and foreigners alike, commits an offence in Egypt which it designates as a criminal offence.<br><br>Article 3 stipulates that any Egyptian who commits an act abroad, considered to be a misdemeanour or a felony according to law, is punished in conformity with its provisions, upon his return to the country. The act is punishable by the laws of the country in which the act was committed. |

Annex (continued)

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
|---|---|---|
| Article 6<br><br>1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.<br><br>2. Such State shall immediately make a preliminary inquiry into the facts.<br><br>3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.<br><br>4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction. | Article 152<br><br>The President of the Republic shall conclude treaties and submit them to the People's Assembly together with an appropriate explanation. They shall have the force of law after their conclusion, ratification and publication in accordance with the prescribed procedures. | Presidential Decree No. 154 of 1986 approving Egypt's accession to the Convention against Torture was published in Arabic in the Official Gazette No. 1 of 7 January 1988 as a result of which the Convention has had legal effect in the country, in accordance with the Constitution's provisions, since 25 July 1986. |

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
|---|---|---|
| Article 7<br><br>1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.<br><br>2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.<br><br>3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings. | | Egyptian legislation does not discriminate between citizens, for any reason whatsoever, as to legal proceedings, punishable offences or penalties. The provisions of the Code of Criminal Procedure and those of the Penal Code, shall apply, in cases involving the competence of the Egyptian authorities without any discrimination between citizens or any others. |

Annex (continued)

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
|---|---|---|
| Article 8<br><br>1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.<br><br>2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions provided by the law of the requested State.<br><br>3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.<br><br>4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1. | Article 152<br><br>The President of the Republic shall conclude treaties and submit them to the People's Assembly together with an appropriate explanation. They shall have the force of law after their conclusion, ratification and publication in accordance with the prescribed procedures. | Presidential Decree No. 154 of 1986 approving Egypt's accession to the Convention against Torture was published in Arabic in the Official Gazette No. 1 of 7 January 1988 as a result of which the Convention has had legal effect in the country, in accordance with the Constitution's provisions, since 25 July 1986. |

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of the other Egyptian legislation, with comments |
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| Article 9<br><br>1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.<br><br>2. States parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them. | Article 152<br><br>The President of the Republic shall conclude treaties and submit them to the People's Assembly together with an appropriate explanation. They shall have the force of law after their conclusion, ratification and publication in accordance with the prescribed procedures. | Presidential Decree No. 154 of 1986 approving Egypt's accession to the Convention against Torture was published in Arabic in the Official Gazette No. 1 of 7 January 1988 as a result of which the Convention has had legal effect in the country, in accordance with the Constitution's provisions, since 25 July 1986. |

Annex (continued)

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
|---|---|---|
| Article 10<br><br>1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.<br><br>2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person. | Article 18<br><br>Education, which is a right guaranteed by the State, is compulsory at the primary level and the State shall endeavour to make it compulsory at other levels. The State shall supervise all forms of education and shall safeguard the independence of universities and scientific research centres in such a way as to establish a closer interrelationship between education and social and production needs. | The Law on Education No. 139 of 1981<br><br>The law of Education was promulgated to fix the objectives of pre-university education; the aim being the upbringing of the Egyptian citizen who has a belief in Allah, the nation, the values of good, justice and humanity. He has to be instilled with a reasonable measure of values so as to learn the applied approach in life as well as acquire the basic elements which will help him attain his dignity, humanity and self-fulfilment.<br><br>Article 15 also stipulates the right to free, compulsory education to all children for the first nine years at school.<br><br>Article 55 also stipulates that private schools are required to abide by the specified syllabi in state schools. Any change in the syllabi has to be approved by the Higher Education Council.<br><br>Note: Human rights and freedoms are taught at Officers' Colleges, law schools as well as at specialized national centres of learning. |

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
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| Article 11<br><br>Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture. | Article 42, paragraph 1<br><br>Any person who is arrested or imprisoned or whose freedom is restricted must be treated in a manner conducive to the preservation of his human dignity. No physical or mental harm shall be inflicted on him, nor shall he be detained or imprisoned in places other than those which are subject to the legal provisions governing prisons. | A. The Code of Criminal Procedure No. 150 of 1950<br><br>Article 43 of the Code stipulates that Officers of justice have to inform the Department of Public Prosecutions as soon as they are cognizant of a person being held on illegal grounds or in a place other than the one specified for detention.<br><br>The same article stipulates the obligation of the Department of Public Prosecutions to move immediately to the place where the detainee is held for prompt investigation so as to free the detainee held on illegal grounds.<br><br>B. The Prisons Act No. 396 of 1956<br><br>Article 91 bis stipulates that it is a criminal offence, punishable by imprisonment, for a public official or one acting in an official capacity to order the detention of, or detain a person in any way at a location other than one of the prisons or places specified in the Act.<br><br>Every prison warden has an obligation, according to law, to accept written and verbal complaints from a prisoner. He must inform immediately the Department of Public Prosecutions or the competent authority after recording them in the relevant complaints' register (art. 80). |

Annex (continued)

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
|---|---|---|
| Article 11 (continued) | | Prisons are subject to judicial control, according to law. The Public Prosecutor and his agents are entitled within their jurisdiction to enter all prisons at anytime to check the application of laws and regulations and take the necessary measures to deal with any violations. They must accept prisoners' complaints, examine registers and legal documents to ensure conformity with rules (art. 85).<br><br>Investigation judges, presidents and agents of courts of appeal, cassation as well as courts of first instance have all the right to enter prisons at all times; in such a case, the prison administration has to convey their observations to the prison director (art. 86). |

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
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| Article 12<br><br>Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. | Article 64<br><br>The rule of law is the basis of government in the State.<br><br>Article 65<br><br>The State is subject to the law. The independence and immunity of the judiciary are fundamental safeguards for the protection of rights and freedoms.<br><br>Article 57<br><br>Any encroachment on the personal freedom or privacy of citizens or on the other rights and public freedoms guaranteed by the Constitution and the law shall constitute an offence and criminal or civil proceedings in connection therewith shall not be subject to any statute of limitations. The State guarantees fair compensation to any person who is a victim of such an offence.<br><br>Article 165<br><br>The judicial authority shall be independent. It shall be exercised by courts of various kinds and levels which shall pass judgement in accordance with the law. | Code of Criminal Procedure No. 150 of 1950<br><br>Officers of justice have an obligation to accept all communications and complaints transmitted to them concerning offences and must send them immediately to the Department of Public Prosecutions (art. 24).<br><br>Every prisoner has the right to submit at any time a written or verbal complaint to the prison warden, who must accept such complaints and transmit them immediately to the Department of Public prosecutions after recording them in the relevant prison register.<br><br>Any person who has been informed of an offence, which can be submitted without a complaint or a request, must inform the Department of Public Prosecutions or one of the officers of justice (art. 25). Article 26 stipulates that, in the case of a public official or any other person authorized to act in a public capacity, they have an obligation to inform the Department of Public Prosecutions or any officer of justice.<br><br>The Department of Public Prosecutions or an investigative judge chosen by the same department examines any torture offence committed as contemplated in articles 126 and 282 of the Penal Code since it is considered to be a crime according to the provisions of Egyptian law. |

Annex (continued)

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
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| Article 12 (continued) | | Comments<br><br>1. Egypt is unique in admitting that members of the Department of Public Prosecutions starting with the Attorney-General are not subject to dismissal on the grounds that the Department is an essential component of the Egyptian judiciary system. It has the competence to investigate and defend in public actions; explaining thus the legally prescribed immunity accorded to its members.<br><br>2. The report mentions in detail the special status enjoyed by members of the judiciary and their immunities.<br><br>3. The report mentions in detail the various stages of criminal investigation in Egypt. |

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
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| Article 13<br><br>Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given. | | |

Annex (continued)

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
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| Article 14<br><br>1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.<br><br>2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law. | Article 57<br><br>Any encroachment on the personal freedom or privacy of citizens or on the other rights and public freedoms guaranteed by the Constitution and the law shall constitute an offence and criminal or civil proceedings in connection therewith shall not be subject to any statute of limitations. The State guarantees fair compensation to any person who is a victim of such an offence<br><br>Article 64<br><br>The rule of law is the basis of government in the State.<br><br>Article 65<br><br>The State is subject to the law. The independence and immunity of the judiciary are fundamental safeguards for the protection of rights and freedoms.<br><br>Article 72<br><br>Judgements are handed down and executed in the name of the people. Any refusal to execute, or any obstruction of the execution of, such judgements on the part of competent public officials constitutes an offence punishable by law. In such a case, the successful plaintiff in the case concerned has the right to institute criminal proceedings directly before the competent court. | A. The Code of Criminal Procedure No. 150 of 1950<br><br>Article 251 stipulates that any person suffering from an offence, is entitled to institute civil proceedings which include the victim's heirs. Article 253 also stipulates that civil actions can be brought against those responsible.<br><br>Article 259 stipulates that civil actions involving torture offences are statute-barred since these are punishable offences as referred to in articles 126, 282 of the Penal Code (see note under article 4).<br><br>Article 63, paragraph 3, stipulates that criminal actions can be instituted directly against a public official or any officer of law for omitting to execute a judgement punishable by article 123 of the Penal Code.<br><br>B. The Penal Code No. 58 of 1937<br><br>Article 123, paragraph 2, stipulates that any public official who refrains on purpose from executing a judgement or order, is punishable by imprisonment or dismissal. |

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
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| Article 15<br><br>**Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings except against a person accused of torture as evidence that the statement was made.** | Article 42<br><br>Any person who is arrested or imprisoned or whose freedom is restricted must be treated in a manner conducive to the preservation of his human dignity. No physical or mental harm shall be inflicted on him, nor shall he be detained or imprisoned in places other than those which are subject to the legal provisions governing prisons. Any statement which is proved to have been made by a citizen under the influence or threat of anything of the above-mentioned nature shall be considered null and void. | The Code of Criminal Procedure No. 150 of 1950<br><br>Article 302 stipulates that any statement by the accused or witnesses which has been made under coercion or threat is considered null and void. |

Annex (continued)

| Article of the Convention | Corresponding articles of the Egyptian Constitution | Corresponding articles of other Egyptian legislation, with comments |
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| Article 16<br><br>1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiesence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.<br><br>2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion. | Article 42, first part<br><br>Any person who is arrested or imprisoned or whose freedom is restricted must be treated in a manner conducive to the preservation of his human dignity. No physical or mental harm shall be inflicted on him, nor shall he be detained or imprisoned in places other than those which are subject to the legal provisions governing prisons. | The Penal Code No. 37 of 1950<br><br>Article 129 designates as punishable by imprisonment all use of force committed by any public official, or by a person acting in an official capacity in a manner detrimental to human dignity or conducive to physical pain. |

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